IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

APPEAL FROM ORDER NO.518 OF 2005

Mr.Jeevanlal Ranchhoddas Tank : Appellant.

versus

M/s.Killick Nixon Ltd. : Respondent.

And

ING Vysya Bank ltd. : Prop.Respondent

Mr.A.H.Shah i/by Mr.M.M.Chopra for the appellant.
Mr.Vijay Nene for the respondent.
Mr.Gautam Panchal i/by Bilawala & Co. for the proposed respondent.

CORAM : D.G.DESHPANDE,J.

DATED : 5th May 2005.

ORAL ORDER

1. The matter was heard by me on the last occasion when the counsel for the respondent pointed out that this company has gone under the

BIFR and this suit or appeal is not maintainable. Today, after going through the concerned letter dated 17th May 2004, which was given to me by the counsel for the respondent, the counsel for the appellant pointed out that the present suit is for a declaration in respect of a document and Section 22 of the Sick Industrial Companies (Special Provisions) Act does not apply. There is substance in what is contended by the counsel for the appellant. If the proceedings are for winding up the industrial company or for execution, distress or the like against any of the properties of the industrial company or for the appointment of a receiver in respect thereof no suit for the recovery of money or for the enforcement of any security against the industrial company ..... shall lie. The present suit does not come under any of the aforesaid category and, therefore, the objection raised by the counsel for the respondent has to be rejected.

2. The counsel for the respondent relied upon the judgment of this Court reported in **2004 (3) Mh.L.J. 228 [Trackparts of India v. Cosmos Co-operative Bank Ltd. & ors.]** The question

involved in that case was whether Section 22 (1) of the said Act applies even to the appeals filed by an Industrial Company against the order of the lower Court pertaining to a monetary claim against such industry. This is not the question involved in the present case. The judgment does not apply.

3. So far as the contention of the appellant in this case is concerned, the impugned order directing him to pay court fees on Rs.75/- lac. It was contended that the plaintiff has sought merely a declaration about the document. There is no prayer for recovery of the money or for money decree and, therefore, the case is governed by Section 6(4)(j). The counsel for the respondent also relied upon Section 6(4)(j) and contended that when the document in respect of which declaration is sought shows amount of Rs.75/- lacs. as recoverable, the claim is susceptible of the monetary valuation and, therefore, the impugned order is correct and proper.

4. The question is what is the relief sought by the appellant. He is merely seeking a

declaration with no consequential relief and, therefore, I do find any substance in the submissions made by the counsel for the respondent. No other provision in law or any authority in this regard was brought to my notice by any of the advocate. Hence the appeal is allowed. The impugned order is set aside. Suit to be numbered.

[D.G.DESHPANDE]

05/05/2005 JUDGE.